IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9745 OF 2004

The Board of Trustees of the
Port of Mumbai ..Petitioner.

Vs.

Grace Lobo & Ors. ..Respondents.

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Mr.H.J.Shah i/b M/s.Mulla & Mulla & C.B.C. for the Petitioner.

Mr.Ashwin Bhalekar for Respondent Nos.9, 10 and 11.

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CORAM : DR.D.Y.CHANDRACHUD, J.

15th April, 2005.

P.C. :

The Petitioner instituted a suit in the City Civil Court (Suit 5390 of 1970) against Joseph William Lobo for possession. The Defendant expired during the pendency of the suit and Respondents 1 to 8 were brought on the record as his heirs and legal representatives. The suit was decreed by the Trial Court on 11th December, 1990. The Petitioner took out an execution application (192 of 1996).

Notice was issued under Order 21 Rule 22 of the Code of Civil Procedure and was made absolute on 17th March, 1998. A writ of possession was issued on 30th April, 2003. On 29th August, 2003 at the time of execution of the writ of possession, it was obstructed by Respondent Nos.9 to 11. In view thereof in September 2003 the Petitioners took out a Chamber Summons (1230 of 2003) for removal of obstruction. The Trial Judge was of the view that the Chamber Summons was taken out in a disposed of suit and the Chamber Summons was accordingly dismissed.

The order passed by the Trial Judge, in my view, cannot be sustained. The Chamber Summons was duly numbered by the registry. A reply to the Chamber Summons was filed since an obstruction was raised in the course of execution. The Chamber Summons is for the removal of the obstruction. In these circumstances, it is only appropriate and proper that the matter is remanded back to the City Civil Court for dealing with the Chamber Summons on merits. The impugned order dated 31st August, 2004 is set aside. Chamber Summons 1230 of 2004 shall be restored to the file of the City Civil Court for

hearing and disposal in accordance with law. The Petition is accordingly disposed of.